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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

JUAN FRANCISCO POLASEK,

Defendant and Appellant.

B233732

(Los Angeles County
Super. Ct. No. MA049681)

APPEAL from a judgment of the Superior Court of Los Angeles County, Hayden A. Zacky, Judge. Reversed.

Cindy Brines, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Scott A. Taryle and Eric J. Kohm, Deputy Attorneys General, for Plaintiff and Respondent.

I. INTRODUCTION

Defendant, Juan Francisco Polasek, pointed a gun at an acquaintance. A jury convicted defendant of personally using a firearm to commit an assault. (Pen. Code,¹ §§ 245, subd. (a)(2), 12022.5, subd. (a).) The jury also convicted defendant of firearm possession by a felon. (§ 12021, subd. (a)(1).) Defendant was sentenced to seven years in state prison. On appeal, defendant contends it was reversible error to fail to hold a hearing on his competence to stand trial. We agree and reverse the judgment.

II. THE MENTAL COMPETENCY PROCEEDINGS

On December 14, 2010, prior to trial, defendant's retained counsel, Mitra Kermani, declared a doubt as to defendant's mental competence to stand trial. Ms. Kermani advised Judge Hayden Zacky: ". . . [I] interviewed my client. I [feel] that he is not able to relay information to me. He is kind of spaced out. And he's got a long history of mental illness in the past. He has been a client of the Department of Mental [Health] as well as being under the care of a private psychiatrist." Ms. Kermani submitted documentation that defendant had been a client of the West Valley Mental Health Center since 2003 and had been diagnosed with schizoaffective disorder. The documentation consisted of a letter written by a mental health professional. On April 13, 2009, Dr. Ines Gerson had written: "Mr. Polasek has been coming to the West Valley Mental Health Center since December of 2003. He has a mental health diagnosis of Schizoaffective Disorder, a complex illness that can be typified by episodes of psychosis, depression, anxiety, mania, poor judgment, and impulsivity. When he first came to this clinic, Mr. Polasek was very ill and had had previous suicide attempts. He is now being treated by Dr. Ines Gerson and case manager, Rose Fischkes, LCSW. His current medications include Cymbalta 60 mg; Abilify 30 mg; and Benadryl. [¶] Prior to the time

¹ All further statutory references are to the Penal Code unless otherwise noted.

of his [earlier] arrest in 2006, he had stopped taking medication and became manic. He now understands the importance of medication and has remained stable on it. He is compliant with his treatment, attends appointments in a timely manner, and has been showing improvement, although he still remains fragile. Due to the nature of his disorder, he will always require ongoing mental health treatment.”

Judge Zacky inquired of defendant: “The Court: . . . Mr. Polasek, have you been able to communicate with your attorney? [¶] The Defendant: Somehow, yes. [¶] The Court: I mean, do you understand everything that she is telling you, or do you feel like you are having some type of psychological issues right now that need to be addressed? [¶] The Defendant: Yes.” Judge Zacky ruled: “I’ll go ahead and accept counsel’s representation here. I do think that based on what I have heard and based on the documentation provided, that the defendant has been a client of the West Valley Mental Health Center since December of ’03 and he has some psychiatric issues that have been diagnosed, that *I will declare a doubt as to his competency*. [¶] Criminal proceedings are suspended pursuant to 1368 of the Penal Code. [¶] The court will appoint two doctors to meet with you, Mr. Polasek. That’ll be Dr. Sharma and Dr. Knapke.” (Italics added.) The trial court’s December 14, 2010 minute order states: “Defendant’s counsel declares a doubt as to the defendant’s mental competence to stand trial. [¶] Criminal proceedings are suspended pursuant to Penal Code section 1368. [¶] The court appoints Dr. Kory Knapke and Dr. Kaushal Sharma to examine the defendant within the meaning of Penal Code section 1368. [¶] The matter is continued to [January 28, 2011] for further hearing pursuant to Penal Code section 1368.”

Dr. Sharma examined defendant on December 22, 2010. Dr. Sharma noted that despite his request for background information, none had been provided. Dr. Sharma found defendant “clearly competent” to stand trial. Dr. Sharma observed: “The defendant was able to discuss circumstances surrounding his arrest. He stated that he was presently in jail because he was accused of pointing a gun at the victim. He claims that he did not have any gun in his possession. He had met the victim at a party given by a friend of a friend. He had known the victim for a few days. The defendant stated that

when he drinks his judgment is not always right. [¶] The defendant was aware that his case was from Antelope Valley Court, he knew the date he was supposed to return to court, he recalled the first name of his attorney stating that the attorney was hired by his mother and he spoke positively of her.”

On January 28, 2011, defendant’s newly retained and substituted attorney, Alan Ross, successfully moved to withdraw the previously declared doubt. Mr. Ross stated: “At this time, I’d like to withdraw the motion under 1368. Mr. Polasek has been receiving medication at Twin Towers for six months. And in my opinion, he is competent to cooperate with counsel. The real issue is whether or not he was able to understand the nature and quality of his act at the time of the commission of the offense. So I have prepared a plea of not guilty by reason of insanity.”

III. DISCUSSION

Defendant contends and the Attorney General concedes that the trial court was constitutionally required to hold a competency hearing once it declared a doubt as to defendant’s competence to stand trial. We agree.

The parties do not dispute that there was substantial evidence raising a reasonable doubt as to defendant’s mental competence. Substantial evidence in this context is evidence raising a reasonable doubt as to a defendant’s ability to understand the proceedings and assist in his or her defense. (*People v. Ramos* (2004) 34 Cal.4th 494, 507; *People v. Davis* (1995) 10 Cal.4th 463, 527; *People v. Jones* (1991) 53 Cal.3d 1115, 1152.)

Both the United States Supreme Court and the California Supreme Court have consistently held that when a trial court declares a doubt as to a defendant’s mental competence to stand trial but fails to hold a competency hearing, the correct procedure is to reverse the judgment. (*Drope v. Missouri* (1975) 420 U.S. 162, 183; *Pate v. Robinson* (1966) 383 U.S. 375, 386-387; *Dusky v. United States* (1960) 362 U.S. 402, 403 [per curiam]; *People v. Halvorsen* (2007) 42 Cal.4th 379, 401; *People v. Young* (2005) 34

Cal.4th 1149, 1216-1217; *People v. Marks* (1988) 45 Cal.3d 1335, 1340; *People v. Hale* (1988) 44 Cal.3d 531, 541-542; *People v. Pennington* (1967) 66 Cal.2d 508, 521; see *People v. Lightsey* (2012) 54 Cal.4th 668, 702-710; *People v. Ary* (2011) 51 Cal.4th 510, 515, fn.1; *id.* at pp. 521-523 [conc. opn. of Werdegarr, J.]; *People v. Solorzano* (2005) 126 Cal.App.4th 1063, 1071.)

We are bound by the foregoing authority. (*People v. Letner* (2010) 50 Cal.4th 99, 197-198; *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) Accordingly, we reverse the judgment. The case was ultimately tried by Judge Kathleen Blanchard. Because we reverse the judgment, we need not consider defendant's assertion that Judge Kathleen Blanchard erred in failing to sua sponte instruct on circumstantial evidence pursuant to CALJIC No. 2.01.

IV. DISPOSITION

The judgment is reversed.

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TURNER, P.J.

We concur:

ARMSTRONG, J.

MOSK, J.